

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

In re:

SGR ENERGY, INC.,

Debtor.

Chapter 11

Case No. 21-60090 (CML)

**MIDSTREAM TEXAS INGLESIDE, LLC'S
MOTION FOR RELIEF FROM THE AUTOMATIC STAY TO ENFORCE LIENS AND
TERMINATE AGREEMENT**

A HEARING WILL BE CONDUCTED ON THIS MATTER ON DECEMBER 21, 2021, AT 10:00 A..M. IN COURTROOM 401, 4TH FLOOR, 515 RUSK,HOUSTON, TEXAS 77002. IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY-ONE DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

COMES NOW Midstream Texas Ingleside, LLC(hereinafter referred to as "Movant") and files this Motion for Relief from Stay (the "Motion") and would show the Court as follows:

I.

Jurisdiction

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334.
2. This proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G).

I.

Parties

3. Movant is a Delaware limited liability company with its principal place of business in Houston, Texas, with offices at 700 Louisiana Street, Suite 4770 Houston, Texas 77002.

4. Debtor SGR Energy, Inc. (“Debtor”) is a Texas corporation that filed a voluntary petition under chapter 11 of title 11 of the United States Bankruptcy Code on November 15, 2021, as case number 201-60090.

III.

Background Facts

5. Movant and Debtor are parties to a Master Service Agreement (dated as of February 1, 2019, by and between Movant and Debtor, as the same has been amended from time to time (the “Agreement”)). A true and correct copy of the Agreement, with amendments is attached hereto as Exhibit 1.

6. Pursuant to the terms of the Agreement, Movant provides services and storage related to Debtor’s marine fuel oil and other commodities stored at Movant’s terminal located at 1269 Sunray Road, Ingleside, Texas (the “Terminal”).

7. Debtor has failed to make payment when due in accordance with the terms of the Agreement. Debtor is currently indebted to Movant in the amount of \$777,330.12 for charges incurred pursuant to the terms of the Agreement. Attached as Exhibit 2 and incorporated herein for all purposes are the invoices supporting this indebtedness, as well as a summary of the invoices. There will be additional amounts due for cleaning the tanks in an amount to be determined.

The affidavit of Mr. Louis Zimmerman, Chief Executive Office of Midstream Texas Ingleside, LLC, is attached hereto as Exhibit 3 and incorporated herein for all purposes to further support this Motion and the amount due.

8. Debtor currently has approximately 10,996 barrels of .5 sulfur marine fuel oil (“Oil”) stored at the Terminal.

9. Movant has a perfected, priority common law and statutory Article 7 warehouse lien on the Oil located at the Terminal, in such amounts as necessary to satisfy its lien. Under Section 23 of the Agreement, as well as the attendant Release attached hereto as Exhibit 4 and incorporated herein for all purposes, Debtor granted Movant a lien on Debtor’s product, and Movant’s lien which first arose February 1, 2019, is perfected as a matter of law pursuant to Texas Business and Commerce Code section 7.209.

10. As set forth in the Agreement and as provided for by Texas statutory and common law, Movant has a priority, perfected warehouse lien on the Oil located at the Terminal, in such amounts as necessary to satisfy its lien. *See* Texas Business and Commerce Code section 7.209.

IV.
Cause Exists for Terminating the Automatic Stay
Under Section 362(d)(1) of the Bankruptcy Code

11. Movant has a possessory lien. If the stay is not lifted and Debtor removes its commodity, Movant will lose its possessory lien. Cause also exists to allow Movant to terminate the Agreement so that Movant might be able to mitigate its damages by leasing the tanks currently leased by Debtor to another party.

IV.
Cause Exists for Terminating the Automatic Stay
Under Section 362(d)(2) of the Bankruptcy Code

12. Cause exists for terminating the automatic stay pursuant to Section 362(d)(2) of the Bankruptcy Code to allow Movants to enforce its warehouse liens on the Oil and to terminate the Agreement. Debtor does not have equity in the Oil and the Oil is not necessary to the effective reorganization of the Debtor. Since Movant has a perfected possessory statutory lien, the Oil cannot be moved until Movant's lien is satisfied. Debtor does not intend to perform under the Agreement and the Agreement has no value to the estate.

13. What constitutes "cause" for lifting the stay pursuant to Section 362(d)1) is not defined in the Bankruptcy Code but must be determined on a case-by-case analysis based upon an examination of the totality of the circumstances. *See, e.g., In re Wells*, Case No. 08-802006-G3-13 (Bankr. S.D. Tex. 2008) citing *In re Trident Assoc. L.P.*, 52 F.3d 127 (6th Cir.1995); *Claughton v. Mixson*, 33 F.3d 4 (4th Cir. 1994); *In re Tucson Estates, Inc.* 912 F.2d 1162 (9th Cir. 1990). 3 (Bankr. E.D. Va. 1989). In this case, Movant clearly has priority liens that can be enforced. Debtor cannot move Oil securing the lien until payment is made. Debtor lacks the financial wherewithal to otherwise satisfy the indebtedness, to perform under the Agreement or to satisfy cure requirements that would be associated with an assumption and assignment of the Agreement.

VI.
PRAYER.

WHEREFORE, Movant respectfully request that this Court enter an order terminating the automatic stay imposed pursuant to Bankruptcy Code Section 362(a) to allow it to (1) sell sufficient Oil located at the Terminal to satisfy the Debtor's obligation to Movant; (2) terminate the Agreement and (3) for such other and further relief to which Movant may be entitled.

Respectfully submitted,

Dated: November 19, 2021

/s/ Patricia Williams Prewitt

Patricia Williams Prewitt

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Counsel for Midstream Texas Ingleside, LLC

CERTIFICATE OF CONFERENCE

On November 17, 2021, the undersigned counsel for Movant contacted Debtor's counsel, Mr. Thomas Berghman, by electronic mail, to discuss this Motion. Debtor's counsel indicated that Debtor is still considering the Motion and there is a possibility of a resolution. Because Movant must hold Debtors' product to perfect its possessory lien, this Motion is filed while the parties continue to attempt to resolve this matter. The undersigned will continue to confer in good faith.

/s/ Patricia Williams Prewitt